

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**PARKERSBURG DIVISION**

DREAMMA LYNN MONTGOMERY,

Petitioner,

v.

CIVIL ACTION NO. 6:04-cv-00626  
(Criminal No. 6:02-cr-00274-01)

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is the petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court: 1) find that the petitioner is entitled to relief under *United States v. Peak*, 992 F. 2d 39 (4<sup>th</sup> Cir. 1993); and 2) grant the petitioner's § 2555 motion only as to her claim concerning the denial of a direct appeal.


Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge. The court **FINDS** that the petitioner is entitled to relief under *United States v. Peak*, 992 F. 2d 39 (4<sup>th</sup> Cir. 1993) and, accordingly, **GRANTS** the petitioner's § 2555 motion [Docket 87] only as to her claim concerning the denial of a direct appeal.

The *Judgment in a Criminal Case* [Docket 52 in 6:02-cr-274-01] entered on May 29, 2003, is hereby **VACATED** and **REINSTATED** as of this date. The court **DIRECTS** that a copy of the reinstated *Judgment in a Criminal Case* be provided to the petitioner's current counsel, Christopher S. Morris, Dinsmore & Shohl, P.O. Box 11887, Charleston, WV 25339.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER:        October 6, 2005

  
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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE